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**STATE OF WISCONSIN  
Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

CWA/146957

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**PRELIMINARY RECITALS**

Pursuant to a petition filed January 28, 2013, under Wis. Admin. Code § HA 3.03, to review a decision by the Bureau of Long-Term Support in regard to Medical Assistance, a hearing was held on April 03, 2013, at Milwaukee, Wisconsin.

NOTE: The record was held open until the end of the day to give the agency an opportunity to submit a copy of Petitioner's Individualized Service Plan. It has been marked as Exhibit 5 and entered into the record.

The issue for determination is whether the IRIS program correctly denied Petitioner's request to repair the bumper and fender of his vehicle at a cost of \$2,066.33 to \$3,983.28.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street  
Madison, Wisconsin 53703  
By: Andrea Loasby  
Bureau of Long-Term Support  
1 West Wilson Street  
Madison, WI 53703

**ADMINISTRATIVE LAW JUDGE:**

Mayumi M. Ishii  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is a resident of Milwaukee County.

2. On December 6, 2012, Petitioner requested that the IRIS program pay for repairs to his front bumper/fender so that it does not rub against a front tire. Petitioner submitted estimates for the repairs from three different body shops ranging from \$2,066.33 to \$3,983.28 (Exhibit 4, Attachments B1-B15).
3. On January 10, 2013, IRIS sent Petitioner a Notice of Action denying his request. (Exhibits 1 and 3)
4. Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on January 25, 2013.
5. Petitioner uses crutches and a wheelchair for mobility and his vehicle has been modified to have hand controls. (Testimony of Petitioner and Ms. Loasby)
6. Petitioner accidentally hit a garbage can, damaging his vehicle. (Testimony of Petitioner)

### DISCUSSION

The petitioner receives medical benefits under IRIS, which stands for Include, Respect, I Self-Direct. This program is a fee-for-service alternative to Family Care, PACE, or Partnership for individuals requesting a long-term care support program in Family Care counties. *Medicaid Eligibility Handbook*, § 37.1.1.

It is a well-established principle that a moving party generally has the burden of proof, especially in administrative proceedings. *State v. Hanson*, 295 N.W.2d 209, 98 Wis. 2d 80 (Wis. App. 1980). In a case involving a request for services from IRIS, the applicant has the initial burden to show that the requested services meet the program's guidelines for approval.

The IRIS program, as an MA Waiver service, may include the following services:

- (1) Case management services.
- (2) Homemaker services.
- (3) Home health aide services.
- (4) Personal care services.
- (5) Adult day health services.
- (6) Habilitation services.
- (7) Respite care services.
- (8) Day treatment or other partial hospitalization services, psychosocial rehabilitation services and clinic services (whether or not furnished in a facility) for individuals with chronic mental illness, subject to the conditions specified in paragraph (d) of this section.
- (9) Other services requested by the agency and approved by CMS as cost effective and necessary to avoid institutionalization.

42 CFR § 440.180(b)

42 CFR §441.482 describes permissible purchases in self-directed waivers programs:

- (a) Participants, or their representatives, if applicable, may, at the State's option, use their service budgets to pay for items that increase a participant's independence or substitute (such as a microwave oven or an accessibility ramp) for human assistance, to the extent that expenditures would otherwise be made for the human assistance.
- (b) The services, supports and items that are purchased with a service budget must be linked to an assessed participant need or goal established in the service plan.

In furtherance of implementing these laws, the IRIS program has developed policies regarding funding of goods and services. *See Policy: SC 16.1, IRIS Funding for Goods, Supports and Services.* That policy requires each service, support or good to meet four criteria:

- a. The item or service is designed to meet the participant's functional, vocational or medical or social needs and also advances the desired outcomes in his/her Individual Service and Support Plan;
- b. The service, support or good is documented on the Individual Service and Support Plan;
- c. The service, support or good is not prohibited by Federal and State statutes and regulations, including the State's Procurement Code;
- d. The service, support or good is not available through another source or is not experimental in nature.

In addition to meeting each of those four criteria, each service, support or good must meet at least one of the following:

- a. The service, support or good will maintain or increase the participant's safety in the home or community environment;
- b. The service, support or good will decrease or prevent increased dependence on other Medicaid-funded services;
- c. The service, support or good will maintain or increase the participant's functioning related to the disability;
- d. The service, support or good will maintain or increase the participant's access to or presence in the community.

#### IRIS policy, SC 16.1

It is Petitioner's desire that IRIS pay for repairs to the front bumper/fender of his vehicle, because the bumper is rubbing against a tire, rendering the vehicle unsafe to drive. According to Ms. Loasby, IRIS did not have issue with the cost effectiveness of repairing the bumper, but denied the request because, vehicle repair is not a defined service under 42 CFR § 440.180(b) and would not further Petitioner's independence.

The service in question is transportation through a vehicle owned and operated by a recipient. This service is not specifically enumerated in 42 CFR §440.180(b) as a service covered by the waivers program. Transportation provided through a vehicle owned and operated by a recipient would fall into the "other services" category in subsection nine of 42 CFR § 440.180(b). Thus, the remaining questions are whether this type of transportation is cost-effective and necessary to prevent Petitioner from entering into an institution.

IRIS did not raise issue with regard to cost-effectiveness and it makes sense that it is less costly to taxpayers to have Petitioner purchase his own vehicle and drive it, as opposed to having Medicaid pay for bus passes or specialized medical transport. Accordingly, repairing Petitioner's bumper would be less costly to the Medicaid program in the long run than having IRIS pay for specialized medical transport or bus vouchers. However, there is insufficient evidence in the record that transportation via a privately owned and operated vehicle is necessary to prevent Petitioner from becoming institutionalized. Indeed, there is no indication in the record that Petitioner is unable to use the bus, summon a taxi or summon medical transport.

Because there is no evidence that the vehicle is necessary to prevent Petitioner from becoming institutionalized, there is insufficient evidence to support a finding that repair of the vehicle would

prevent Petitioner's institutionalization. Consequently, it is not a covered service under the aforementioned Federal Regulations.

Petitioner argues that his vehicle is necessary to maintain his independence and as such, the repairs to his vehicle are necessary.

Arguably, maintenance of Petitioner's vehicle meets the criteria under 42 CFR §441.482 , because the vehicle increases Petitioner's independence and eliminates the need for Petitioner to be transported by another person, whether it be a bus driver or other medical transport personnel. Further, maintenance of the vehicle is directly linked to a need or goal in the service plan. Goal #1 in Petitioner's Service Plan is "control over transportation" and "being able to go places when I need to is important to me." (Exhibit 5) The Service Plan indicates that this goal is being met through "natural supports", presumably, Petitioner's own modified vehicle. (Id.)

However, the criteria enumerated under 42 CFR §441.482 cannot be interpreted in a vacuum. As such, goods and services that are approvable under 42 CFR §441.482, must also meet the criteria established for waivers programs under 42 CFR §440.180(b). As discussed above, transportation in a privately owned and operated vehicle is not necessary to prevent Petitioner's institutionalization and as such, is not a covered service under 42 CFR § 440.180(b).

It should be noted that the record did not make clear whether Petitioner has auto insurance that would cover the damage to his vehicle. If Petitioner does have insurance, having his insurance company cover the cost would be the more cost-effective means of taking care of the repairs.

### **CONCLUSIONS OF LAW**

IRIS correctly denied Petitioner's request to repair the front bumper/fender of his vehicle at a cost of \$2,066.33 to \$3,983.28.

**THEREFORE, it is**

**ORDERED**

That the Petition is dismissed.

### **REQUEST FOR A REHEARING**

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

**APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

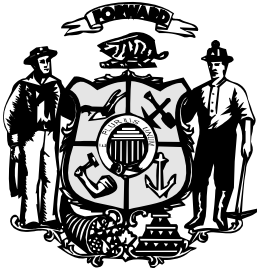
For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 8th day of April, 2013.

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\sMayumi M. Ishii  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on April 8, 2013.

Bureau of Long-Term Support